

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

UNITED STATES OF AMERICA for the
use of NORTH STAR TERMINAL &
STEVEDORE COMPANY, d/b/a NORTHERN
STEVEDORING & HANDLING, and NORTH
STAR TERMINAL & STEVEDORE COMPANY,
d/b/a Northern Stevedoring &
Handling, on its own behalf,

Plaintiffs,

COPY

and

UNITED STATES OF AMERICA for the
use of SHORESIDE PETROLEUM, INC.,
d/b/a Marathon Fuel Service, and
SHORE PETROLEUM, INC., d/b/a
Marathon Fuel Service, on its own
behalf,

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER
ROCK PRODUCTS, INC.; UNITED
STATES FIDELITY AND GUARANTY
COMPANY; and ROBERT A. LAPORE,

Defendants.

No. A98-009 CIV (HRH)

DEPOSITION OF JEFFREY "JEFF" BENTZ
Pages 1 - 221 (inclusive)
November 21, 2005
8:33 a.m.



Page 2	Page 4
<p>1 2 3 Taken at: 4 The Law Offices of Oles Morrison Rinker & Baker 5 745 West 4th Avenue, Suite 502 6 Anchorage, Alaska 7 8 9 10 Reported by: Leslie J. Knisley 11 Shorthand Reporter 12 13 Y900 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 I-N-D-E-X 2 JEFFREY "JEFF" BENTZ NOVEMBER 21, 2005 3 EXAMINATION 4 PAGE 5 BY MS. HO 6 6 BY MR. VIERGUTZ 209 7 8 NUMBER EXHIBITS PAGE 9 1 Renote of Deposition, 9 10 6 pages 11 2 North Star's Second 35 12 Supplemental Disclosures, 13 7 pages 14 3 North Star's Responses to 55 15 Defendant's First Set of 16 Discovery Requests, 17 17 pages 18 19 4 Copy of four business cards, 61 20 1 page 21 5 North Star's Amended Complaint, 70 22 26 pages 23 24 6 Credit application and various 71 25 documents, 9 pages 1 7 Affidavit of Jack Goodwill, 89 2 25 pages 3 4 8 Current rates and invoices, 93 5 9 pages 6 9 Daily notes of operations, 110 7 13 pages 8 9 10 Invoices and timecards, 115 10 34 pages 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 A-P-P-E-A-R-A-N-C-E-S 2 For Plaintiffs: 3 4 MR. MICHAEL W. SEWRIGHT 5 Burr, Pease & Kurtz, PC 6 810 N Street 7 Anchorage, AK 99501 8 (907) 276-6100 9 10 For Shoreside Petroleum: 11 12 MR. STEVEN J. SHAMBUREK 13 Law Office of Steven J. Shamburek 14 425 G Street, Suite 630 15 Anchorage, AK 99501 16 (907) 250-0044 17 18 For Nugget Construction, Inc.: 19 20 MS. GLORIA Y. HO 21 MR. TRAEGER MACHETANZ 22 Oles Morrison Rinker & Baker, PC 23 745 West 4th Avenue, Suite 502 24 Anchorage, AK 99501-2136 25 (907) 258-0106 1 For USF&G: 2 MR. HERBERT A. VIERGUTZ 3 Barokas Martin & Tomlinson 4 1029 West 3rd Avenue, Suite 280 5 Anchorage, AK 99501 6 (907) 276-8010 7 8 Also Present: 9 MR. JOHN SMITHSON, Nugget Construction 10 MR. DOUG LECHNER, Metco, Inc. 11 12 Reported by: 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 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2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030</p>	

<p style="text-align: right;">Page 78</p> <p>1 rocket science.</p> <p>2 A Do we solicit our customers to grant</p> <p>3 them credit?</p> <p>4 Q Well, yes. I mean, do you say, okay,</p> <p>5 our company has lines of credit which we can</p> <p>6 grant to a business?</p> <p>7 A We don't grant lines of credit.</p> <p>8 Q Do you solicit them?</p> <p>9 A We don't solicit lines of credit.</p> <p>10 Q Okay. Then, do potential customers</p> <p>11 reveal to you that they might have a financial</p> <p>12 difficulty in working with North Star and do</p> <p>13 they, these potential customers, ask North Star,</p> <p>14 do you have any way of assisting us so that we</p> <p>15 can consummate this agreement to work with North</p> <p>16 Star?</p> <p>17 MR. SEWRIGHT: Objection to form of the</p> <p>18 question.</p> <p>19 A That's not our general way of doing</p> <p>20 business as you have posed the question.</p> <p>21 BY MS. HO:</p> <p>22 Q Then how does North Star generally do</p> <p>23 this business regarding its commercial accounts</p> <p>24 and credit applications?</p> <p>25 A Most of our customers have been</p>	<p style="text-align: right;">Page 80</p> <p>1 that Mr. Bentz is reading what I am.</p> <p>2 Q Mr. Bentz, paragraph 3, would you</p> <p>3 please read that aloud for the record?</p> <p>4 A Well, I don't have my reading glasses</p> <p>5 with me and this is fairly illegible. But,</p> <p>6 "Applicant agrees to notify North Star Terminal &</p> <p>7 Stevedore Company promptly of any changes in</p> <p>8 ownership of the business conducted under the</p> <p>9 account name and agrees to liability for all</p> <p>10 charges to the business conducted under the</p> <p>11 account name unless and until North Star Terminal</p> <p>12 reviews written notice of a change in ownership</p> <p>13 of that business."</p> <p>14 Q And then it looks like Mr. LaPore has</p> <p>15 signed that agreement. Was there any dispute by</p> <p>16 North Star that this particular agreement signed</p> <p>17 by Mr. LaPore was unacceptable to North Star?</p> <p>18 A Not that I know of.</p> <p>19 Q Now, during the time that Mr. LaPore</p> <p>20 and Spencer Rocks had a business engagement with</p> <p>21 North Star, did Mr. LaPore or anyone at Spencer</p> <p>22 Rocks notify North Star that there was an</p> <p>23 ownership of business?</p> <p>24 MR. SEWRIGHT: Object to the form of</p> <p>25 the question.</p>
<p style="text-align: right;">Page 79</p> <p>1 long-time customers of North Star. When we come</p> <p>2 across a new business, depending on the volume of</p> <p>3 business, the length and duration of the</p> <p>4 business, the type of business, whether or not</p> <p>5 it's a federally-funded project, a bondable</p> <p>6 project, not bonded project, we may or may not do</p> <p>7 any number of variety of different ways to try to</p> <p>8 secure our future.</p> <p>9 Q Thank you, Mr. Bentz. That's what I</p> <p>10 needed clarification on.</p> <p>11 If you would please turn to page 4 of</p> <p>12 this nine-page document. It says Agreement on</p> <p>13 top. And it looks to be Spencer Rock Products</p> <p>14 and a signature of what looks to be Robert LaPore</p> <p>15 and what looks to be dated January 28th, 1997.</p> <p>16 Do you disagree with what's stated on</p> <p>17 this agreement?</p> <p>18 A Do I disagree with what's stated on the</p> <p>19 agreement?</p> <p>20 Q In terms of what I've just noted. The</p> <p>21 company name, the signature and the date.</p> <p>22 A Yes, that's right.</p> <p>23 MR. SEWRIGHT: Objection. Counsel, the</p> <p>24 document speaks for itself.</p> <p>25 MS. HO: Well, I just want to be sure</p>	<p style="text-align: right;">Page 81</p> <p>1 BY MS. HO:</p> <p>2 Q Mr. Bentz?</p> <p>3 A Did anybody notify us of ownership of</p> <p>4 Spencer?</p> <p>5 Q No. Did anyone -- first, did</p> <p>6 Mr. LaPore notify you --</p> <p>7 A Hold on just a second. Could you</p> <p>8 reread the question back to me that she asked?</p> <p>9 (Question read by the reporter.)</p> <p>10 BY MS. HO:</p> <p>11 Q Let me rephrase that.</p> <p>12 A Doesn't make any sense.</p> <p>13 Q The question is: First, did Mr. LaPore</p> <p>14 at any time notify North Star that Spencer Rocks,</p> <p>15 Incorporated had a change of ownership in terms</p> <p>16 of its business?</p> <p>17 A Define "change in ownership."</p> <p>18 Q Well, you tell me. When North Star</p> <p>19 became doing business as a limited liability</p> <p>20 company, didn't it have to go through legal steps</p> <p>21 to make sure that the form of the entity was --</p> <p>22 A There are some customers, some people</p> <p>23 that we had contracts with that we had to notify.</p> <p>24 We didn't have to notify a lot of people.</p> <p>25 Q Right. And in this case with Spencer</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 130</p> <p>1 contract as a prime contractor, say, with the 2 federal government? 3 A I don't think as a prime contractor, 4 no. It depends on what you're talking about. We 5 do work for the military where it's a sole-source 6 contract, but not where we have necessarily subs 7 working underneath us or anything like that. 8 Q But North Star has had dealings with 9 the federal government and how those contracts 10 work, correct? 11 A Yeah. Usually we're somewhere down the 12 line, though, as a subcontractor or something of 13 that nature. 14 Q Does North Star inquire -- say, for 15 example, if North Star considers itself a 16 supplier to a supplier on a federal bonded 17 contract, is North Star's normal business custom 18 and practice to inquire of the first tier 19 supplier what their role and position would be? 20 MR. SEWRIGHT: Object to the form of 21 the question. 22 A Give me an example. 23 BY MS. HO: 24 Q Well, for example, in this case. Did 25 North Star actively inquire of Spencer Rock what</p>	<p style="text-align: right;">Page 132</p> <p>1 to be rather confusing, I guess, to some agree. 2 Q Well, if it was confusing, didn't North 3 Star at least inquire and clarify the confusion 4 for itself at least for purposes of the project? 5 A What confusion are you referring to? 6 Q Well, you're the one who said 7 confusion. You tell me. 8 A Tell you about the confusion? 9 Q Yes. 10 A Well, I mean, originally the job was 11 set up -- apparently was set up from Spencer, but 12 it appears that we were taking direction from 13 what we thought was a Nugget employee at the 14 time, and as it turned out, it appears that he 15 was employed by several people. 16 Q It appears, but at the same time did 17 you actively inquire of the role of the 18 individuals you're referring to? 19 A I did not actively inquire. 20 Q And did anybody at North Star? 21 A I don't know. 22 Q So there's no representation by Nugget 23 that any of its employees were taking control of 24 the operations of Spencer Rock. 25 A Is that a statement?</p>
<p style="text-align: right;">Page 131</p> <p>1 its role would be in the project? 2 A We did not -- I don't know what all we 3 inquired on at the time that the job was set up. 4 Q So you don't know, but who in North 5 Star would know? 6 A Who would remember? 7 Q Who would recall, or who do you think 8 would recall? 9 A I don't know. 10 Q Would Jack Goodwill? 11 A He may recall. I don't know. You'd 12 have to ask him. 13 Q I probably will. But to your 14 recollection, you never inquired of Spencer Rock 15 what their role in the Homer Spit project was? 16 A I don't remember what all inquiries 17 that I had in '97. 18 Q But to your understanding, Spencer Rock 19 Products was a separate and distinct company from 20 Nugget Construction Company, correct? 21 A I don't know that. 22 Q Well, what information did you have 23 from Spencer Rock? 24 A Back then we had the information that's 25 been presented to you. But, you know, it seemed</p>	<p style="text-align: right;">Page 133</p> <p>1 MR. SEWRIGHT: Objection to the form of 2 the question. 3 BY MS. HO: 4 Q I'm asking you. 5 A You didn't ask me a question. 6 Q Well, then let me ask you: To your 7 knowledge do you know if Nugget Construction 8 Company or any of its representatives or 9 employees made representations to anyone at North 10 Star that it was taking control of the operation? 11 A Through their actions they did. 12 Q There was no oral representation, was 13 there? 14 A Certainly there was. 15 Q There was -- can you specify them? 16 MR. SEWRIGHT: There's Jack Goodwill's 17 affidavit and everything. 18 MS. HO: No, I'm talking about -- 19 MR. SEWRIGHT: Are you talking about 20 him personally or representations made to North 21 Star? 22 BY MS. HO: 23 Q No, this is on your knowledge, Mr. 24 Bentz, and North Star's knowledge to provide 25 specific --</p>

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1 MR. SEWRIGHT: Okay. Objection;
2 compound question. Which one do you want?
3 BY MS. HO:
4 Q Well, let's go through both.
5 First, let's talk about North Star's
6 understanding and belief of which individuals
7 within Nugget Construction Company represented to
8 North Star that they were taking control of the
9 operations or alleged control.
10 A It appeared that way through their
11 actions by the fact that Mr. LaPore was not
12 making contact with Jack to schedule and do the
13 work and discuss the work with him; it was Randy
14 Randolph. And at the time Randy Randolph was
15 presenting himself as a Nugget employee --
16 Q But the barge loadings --
17 A -- is what the business cards indicate,
18 I believe.
19 Q And it also indicated that Mr. Randolph
20 was an LDR Engineering employee.
21 A Well, we don't know when that timecard
22 was -- or when that name card was actually
23 received, do we?
24 Q Well, that's why I'm asking you. They
25 were produced from your files. I want to know if

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1 you know what time period they were produced.
2 A Everything that I've read in the case,
3 which a lot of what I understand is from reading
4 the documents, just like a lot of what you
5 understand is from reading the documents because
6 I was not in Seward at the time.
7 Q Well, Mr. Bentz, I appreciate your
8 understanding, but please don't impose your
9 understanding of what I understand in the case.
10 A I would never do that.
11 Q Thank you. Now, in terms of what
12 Nugget Construction employees or representatives
13 allegedly indicated to North Star's personnel, do
14 you have a specific communication, a specific
15 time frame that you're referring to that would
16 substantiate this alleged conduct?
17 A I believe if you look in Mr. Goodwill's
18 document where -- under his statement it says
19 that the loading was directed by Randy Randolph.
20 Q Now, did North Star have an exclusive
21 agreement with Nugget to load the barges?
22 MR. SEWRIGHT: Object to the form of
23 the question.
24 BY MS. HO:
25 Q They didn't, did they?

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1 A What do you mean did we have an
2 exclusive --
3 Q Well, when North Star loads these
4 barges, the original agreement was with Spencer
5 Rock, correct?
6 A That's correct.
7 Q And then there was no subsequent
8 agreement to modify that relationship between
9 Spencer Rock and North Star, correct?
10 MR. SEWRIGHT: Objection to the form of
11 the question; calls for a legal conclusion.
12 BY MS. HO:
13 Q To your understanding of the facts of
14 this case, was there any communications written
15 or oral that would have altered that relationship
16 between Spencer Rock and North Star?
17 MR. SEWRIGHT: Same objections.
18 A If you read all the documents, it
19 appears that way.
20 BY MS. HO:
21 Q That no written or oral communications
22 or documentation changed the relationship between
23 Spencer Rock and North Star?
24 MR. SEWRIGHT: Continuing objection.
25 A Well, I think that the relationship

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1 changed as a function of -- if you read the
2 entire story, if you read the whole novel,
3 instead of one chapter, to me it seems rather
4 obvious what happened.
5 BY MS. HO:
6 Q I'm not asking for the whole chapter.
7 We're talking about a specific time frame, 1997,
8 when Mr. LaPore and Spencer Rock entered an
9 agreement with North Star.
10 Do you disagree with that event
11 occurring?
12 A Disagree with what event occurring?
13 They contracted us to do work.
14 Q Right.
15 A Uh-huh, Mr. LaPore did contract us to
16 do some work.
17 Q Right. And then there's no subsequent
18 agreement or alteration between North Star or
19 Spencer Rock that changed that relationship?
20 MR. SEWRIGHT: Same continuing
21 objections.
22 BY MS. HO:
23 Q Is that correct, Mr. Bentz?
24 A No, I don't agree with what you're
25 saying, the way you're wording it.

35 (Pages 134 to 137)

<p style="text-align: right;">Page 138</p> <p>1 Q Well, then can you point to any 2 particular document or communications that would 3 show that that relationship between North Star 4 and Spencer Rock changed? 5 A Yeah. 6 Q Okay. Go ahead. 7 A Jack's affidavit, for one, says that 8 Randy Randolph was the one directing him. If you 9 go and you read in the testimony of all this, it 10 says that Bob LaPore ended up driving a truck and 11 that he wasn't actually doing what he was hired 12 to do. If you read it, it says that there was a 13 support agreement in place that we were never 14 informed of. 15 Q Never informed of the support 16 agreement. When was the first time you had 17 knowledge of the support agreement? 18 A After all the work had been done. 19 Q And did you expect that those kind of 20 agreements that were privy between my client, 21 Nugget Construction Company, and Spencer Rocks 22 would have been shown to the world? 23 MR. SEWRIGHT: Objection to the form of 24 the question, Counsel. 25 A No, what I would expect is that if I</p>	<p style="text-align: right;">Page 140</p> <p>1 particular paragraph? 2 MS. HO: Yes, paragraph 10. 3 MR. SEWRIGHT: Thank you. 4 BY MS. HO: 5 Q Now, after reading that -- 6 MR. SEWRIGHT: Have you had a chance to 7 look at all of paragraph 10? 8 THE WITNESS: No, no. 9 BY MS. HO: 10 Q Go ahead and look at that. Just that 11 last sentence. 12 A What? Nugget was calling the shots? 13 Q No, that's a complete 14 mischaracterization of Mr. Goodwill's affidavit. 15 I'm asking you to read the last -- 16 MR. SEWRIGHT: Objection, Counsel. I'm 17 going to read from this affidavit, top of page 6, 18 "Which also demonstrates to me that Nugget was 19 calling the shots." Now, how is that a 20 mischaracterization of the exhibit? 21 MS. HO: Counsel, I'm asking Mr. Bentz 22 to read paragraph 10 on page 5. 23 Q Why are you on paragraph 6, sir? 24 A It's not. It's page 6; it's still 25 paragraph 10, the end of paragraph 10.</p>
<p style="text-align: right;">Page 139</p> <p>1 received money from somebody that wasn't mine, it 2 belonged to somebody else because they performed 3 the work, that I'd make sure they got the money 4 for it. That's what I would expect. 5 BY MS. HO: 6 Q And that enforcement of your monies due 7 should have been between North Star and Spencer 8 Rock because that was the agreement between the 9 two entities, correct? 10 A I disagree with you wholeheartedly. 11 Q I disagree with you, too, sir. 12 A That's your prerogative. We disagree 13 with each other, Mrs. Ho. 14 MR. SEWRIGHT: Since we've established 15 we disagree, can we just end right now? 16 BY MS. HO: 17 Q Let's not do that. Let's turn to 18 Exhibit 7, which is Mr. Jack Goodwill's 19 affidavit, and then you look at page 5, paragraph 20 10, last sentence starting with -- 21 A Page 5, you said? 22 Q Page 5, yes. 23 A Okay. 24 Q Read that to yourself. 25 MR. SEWRIGHT: Did you point out a</p>	<p style="text-align: right;">Page 141</p> <p>1 Q The sentence before that. I already 2 stated for the record starting with the word 3 "when." 4 A Do you want me to comment on one 5 sentence? 6 Q I will ask -- and if you read it for 7 the record, please. "When I" -- or if you want, 8 I'm happy to read it for the record. Whichever 9 way you want. 10 A Go ahead. 11 Q Okay. "When I" -- meaning Jack 12 Goodwill -- "demanded payment from Nugget through 13 Randy Randolph, Mr. Randolph told me that Nugget 14 believed Spencer Rock owed Northern Stevedoring 15 the money and that, as far as he was concerned, 16 payment was a matter between Spencer Rock and 17 Northern Stevedoring." 18 He said it was not Nugget's problem. 19 A In his opinion. 20 Q Do you disagree with that? 21 A Do I disagree with his opinion? I 22 can't disagree with his opinion; it's his 23 opinion. 24 Q Well, then your opinion is, 25 essentially, that you think my clients are owing</p>

<p style="text-align: right;">Page 142</p> <p>1 you monies, right?</p> <p>2 A Absolutely.</p> <p>3 Q Well, that's absolutely incorrect</p> <p>4 because at any time to North Star's knowledge --</p> <p>5 MR. SEWRIGHT: Counsel, will you ask</p> <p>6 questions and not argue your case? If you want</p> <p>7 to argue your case, do it in front of the judge</p> <p>8 and the jury. Don't argue with the witness, who</p> <p>9 is my client.</p> <p>10 BY MS. HO:</p> <p>11 Q Okay, Mr. Bentz. I don't want to argue</p> <p>12 with you, but to your knowledge was there any</p> <p>13 time that my client, Nugget Construction Company,</p> <p>14 orally or writtenly (ph) said that it was ever</p> <p>15 going to assume Mr. LaPore's responsibilities in</p> <p>16 its agreement with --</p> <p>17 A Absolutely.</p> <p>18 Q Okay. Cite that time, sir.</p> <p>19 A When they entered into the support</p> <p>20 agreement without our knowledge and went in and</p> <p>21 took over the quarry.</p> <p>22 Q They went in with a support agreement;</p> <p>23 that has nothing to do with North Star. That</p> <p>24 agreement was with Spencer Rock and with Nugget</p> <p>25 Construction Company.</p>	<p style="text-align: right;">Page 144</p> <p>1 at the whole exhibit, which consists of five</p> <p>2 pages. Is that what you have, Mr. Bentz?</p> <p>3 A Yeah, five pages.</p> <p>4 Q Okay. Great. Now, this is Exhibit No.</p> <p>5 11, which contains the material contract between</p> <p>6 Spencer Rock Products and Nugget Construction</p> <p>7 Company and also the subsequent support agreement</p> <p>8 between Nugget Construction Company and Spencer</p> <p>9 Rock Products dated April 23rd, 1997.</p> <p>10 Do you disagree with that?</p> <p>11 A I haven't finished reading it yet.</p> <p>12 MR. SEWRIGHT: Counsel, for the record,</p> <p>13 let's establish these documents are really two</p> <p>14 separate documents; the four-page what is</p> <p>15 entitled Material Contract dated on or about the</p> <p>16 middle of January, 1997; and then a subsequent</p> <p>17 support agreement, a separate document, dated</p> <p>18 April 23, a one-pager. I mean, because you have</p> <p>19 them stapled together as one exhibit, I wanted to</p> <p>20 point out they're separate documents.</p> <p>21 MS. HO: I'll identify them as Nugget</p> <p>22 007224 through Nugget 00728.</p> <p>23 MR. SHAMBUREK: Would it help to mark</p> <p>24 the Support Agreement as Exhibit 12?</p> <p>25 MR. SEWRIGHT: I think so.</p>
<p style="text-align: right;">Page 143</p> <p>1 MR. SEWRIGHT: Objection.</p> <p>2 A Ms. Ho, they stepped into the shoes of</p> <p>3 the client that we were supposed to be working</p> <p>4 for and they directed us to do the work. They</p> <p>5 then collected the money, intercepted the money</p> <p>6 that never got paid to the person that we were</p> <p>7 supposed to work for so that we could get our</p> <p>8 money.</p> <p>9 BY MS. HO:</p> <p>10 Q Mr. Bentz, those are serious</p> <p>11 allegations against my client. If you have any</p> <p>12 particular knowledge or fact of a specific</p> <p>13 incident that shows that, please cite that.</p> <p>14 Now, Mr. Bentz, I will submit to you</p> <p>15 the support agreement as between my client and</p> <p>16 Spencer Rock and Robert LaPore.</p> <p>17 Would you please mark this as an</p> <p>18 exhibit?</p> <p>19 A Are we done with Exhibit 10 for now?</p> <p>20 Q For now.</p> <p>21 (Exhibit 11 marked.)</p> <p>22 MR. SEWRIGHT: Do you want him to look</p> <p>23 at the whole exhibit or just the last page?</p> <p>24 BY MS. HO:</p> <p>25 Q While you're at it, why don't you look</p>	<p style="text-align: right;">Page 145</p> <p>1 MS. HO: Let's go ahead and do that.</p> <p>2 That's fine.</p> <p>3 (Exhibit 12 marked.)</p> <p>4 BY MS. HO:</p> <p>5 Q Now, Mr. Bentz, you've reviewed</p> <p>6 Defendants' Exhibit No. 11 and Defendants'</p> <p>7 Exhibit No. 12, have you not?</p> <p>8 A I've read 11, yeah.</p> <p>9 Q Okay. And Exhibit 11 is the Material</p> <p>10 Contract between Nugget Construction Company and</p> <p>11 Spencer Rock Products; is that correct?</p> <p>12 A That's what it says.</p> <p>13 Q Okay. If you turn to page 2 of Exhibit</p> <p>14 No. 11 and go to Section No. 4 on the bottom of</p> <p>15 the page --</p> <p>16 A Yeah.</p> <p>17 Q -- you can read that paragraph to</p> <p>18 yourself, and it runs over to the next page,</p> <p>19 Nugget 007226.</p> <p>20 MR. SEWRIGHT: Section what?</p> <p>21 MS. HO: Section 5. Section 5 runs at</p> <p>22 the end of the second page and goes into the top</p> <p>23 of the third page.</p> <p>24 THE WITNESS: Okay.</p> <p>25 MR. SEWRIGHT: Which one do you want</p>

37 (Pages 142 to 145)

<p style="text-align: right;">Page 150</p> <p>1 objection is noted for the record. 2 THE WITNESS: Just hold on a second. 3 Could you please reread her question as she 4 stated it? 5 (Question read back by the reporter.) 6 MR. SEWRIGHT: Same objections. 7 A I'm not sure how to answer your 8 question. 9 BY MS. HO: 10 Q Okay. Let me break it down for you. 11 In North Star's understanding, there 12 was North Star and Spencer Rock which had the 13 business relations, is that correct, in 1997 that 14 North Star provide stevedoring job duties on the 15 project for Spencer Rock; is that correct? 16 MR. SEWRIGHT: Continuing objection to 17 the form of the question; legal conclusion. 18 A We were originally contacted by 19 Mr. LaPore to load rock onto a barge pending 20 their successful outcome at getting the work, was 21 how it was originally parlayed to me. That's my 22 understanding of how the whole situation started. 23 BY MS. HO: 24 Q Okay. 25 A You know, but whether or not Spencer</p>	<p style="text-align: right;">Page 152</p> <p>1 have paid the people that they have to pay. 2 Q And that's what Nugget Construction 3 Company has done. Your counsel has revealed all 4 the documents on vendors and subcontractors and 5 whatnot on this particular project. 6 But with respect between North Star and 7 Spencer Rock and the business arrangement there, 8 it was Spencer Rock who was responsible for 9 ultimately paying for North Star's services. 10 A Originally that's what we thought, but 11 there's, you know, after we'd done the work, we 12 learned of all these other things that indicate 13 that in fact we weren't really even working for 14 Spencer Rock. We were working for Nugget. 15 Q But there's no oral or written 16 communications in effect that would indicate 17 that, sir. 18 A I think there are plenty of facts here 19 to indicate that. 20 Q You're being ambiguous. I don't know 21 what facts you're referring to. 22 MR. SEWRIGHT: Counsel, I'm really, I'm 23 really -- in the jurisdiction you just don't make 24 those kind of statements and argue with a witness 25 at a deposition. I'm really starting -- I'm not</p>
<p style="text-align: right;">Page 151</p> <p>1 did something negligent or not, which would lead 2 to clause 10 being held -- you know... 3 Q I just want to show you now that you 4 have a chance to look -- you're saying that my 5 clients didn't disclose this contract to you and 6 whatnot. There are terms and conditions that are 7 specific between the parties who are engaged in 8 the agreement just like North Star has certain 9 obligations and duties under its contract with 10 its vendors or suppliers; isn't that correct? 11 A Yes. 12 MR. SEWRIGHT: I'm going to object to 13 the form of the question. 14 You can go ahead and try to answer. 15 I'm just objecting for the record. 16 A If I receive money for services that I 17 provided because of a subcontract and somebody 18 actually produced that work so that I could get 19 that money for that, I'd make sure they got paid 20 for their services. That's their money. 21 BY MS. HO: 22 Q But then -- 23 A It's a federal job. The reason there's 24 bonding on federal jobs is so the federal 25 government ensures that their general contractors</p>	<p style="text-align: right;">Page 153</p> <p>1 going to get upset -- but I'm pointing out to you 2 that that's unusual, so... 3 MS. HO: Counsel, I appreciate your 4 objection. 5 MR. SEWRIGHT: And I'm going to have a 6 continuing objection to your argumentative 7 questions, your assuming facts not in evidence, 8 your speeches, et cetera. And just because you 9 end your speech with an "isn't that correct," 10 doesn't turn it into a question and it doesn't 11 turn it into a proper question. So I will 12 continue to object. I have a continuing line of 13 objections to these types of questions. 14 MS. HO: Counsel, I appreciate your 15 objections. They're noted for the record. I 16 have not been discourteous to your client. We're 17 just trying to ascertain the validity of the 18 claims and the allegations. 19 MR. SEWRIGHT: I didn't claim you were 20 being discourteous. 21 MS. HO: I'm not being argumentative. 22 MR. SEWRIGHT: That I do claim. 23 BY MS. HO: 24 Q Mr. Bentz, if North Star is a party to 25 this litigation, then my clients are entitled to</p>

39 (Pages 150 to 153)

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1 Q You cannot pinpoint any specific
2 communication that would indicate Nugget
3 directed --
4 A Other than what's on record already, I
5 don't know of anything else.
6 Q Okay. So in North Star's beliefs and
7 your beliefs, for that matter, when did Nugget
8 start directing the activities of the barge -- do
9 you consider it after the first barge loading by
10 North Star?
11 A You already asked that question. I've
12 answered it twice. Starting with the first
13 barge.
14 Q Okay. Now, if that's the case then,
15 was there any indication by North Star that in
16 its minds and its belief that Nugget had taken
17 over the agreement between Spencer and North
18 Star?
19 A Through their actions.
20 Q Well, what actions are you referring
21 to?
22 A The fact that an employee that's
23 supposedly a Nugget employee, but as it turns out
24 is a Spencer owner and has got his own business
25 and everything else going on, was directing us to

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1 do the work.
2 Q Directing you to do the work. What
3 work are you referring to? These are Nugget's
4 barges. They had an interest in ensuring that no
5 damage would have been done to these barges;
6 isn't that true?
7 MR. SEWRIGHT: Object to the form of
8 the question; compound. You had about three or
9 four things in there topped off with "isn't that
10 true."
11 MS. HO: Thank you, Counsel. Let me
12 rephrase.
13 Q First of all, when Nugget was at the
14 barges and so-called what you testified as
15 directing the barge loadings, isn't it true that
16 Nugget had an interest in these barges and how
17 these barges were handled?
18 MR. SEWRIGHT: Same objection.
19 A I can't --
20 THE WITNESS: Traeger, do you want to
21 switch places with her? Because if you're going
22 to be feeding her the questions, I might as well
23 be sitting across the table from you, which I'll
24 be more than happy to do.
25 MR. SEWRIGHT: Do you want to respond,

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1 Traeger?
2 MR. MACHETANZ: I'd be happy to do
3 that.
4 THE WITNESS: Let's go.
5 MR. MACHETANZ: Do you have any
6 objections to it, Counsel?
7 MR. SEWRIGHT: Let's just go off the
8 record for a moment.
9 (Short discussion off the record.)
10 MS. HO: Let's go back on the record,
11 then.
12 Q Now, we were talking about tonnage.
13 Do you know or does anybody at North
14 Star know who determined the number of trucks
15 that would arrive at the barge?
16 A I don't know.
17 Q Who would know at North Star?
18 A Probably Spencer and Nugget would know
19 how many trucks were arriving.
20 Q Was Goodwill there? Was Goodwill
21 present at the barges when the trucks were
22 arriving?
23 A You'll have to ask him.
24 Q But to your knowledge you don't
25 personally know.

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1 Now, when did Spencer Rock ever tell
2 Nugget to your knowledge or to anyone at North
3 Star's knowledge that it had a contract with my
4 client, Nugget Construction Company?
5 A I'm sorry?
6 Q When to your knowledge or North Star's
7 knowledge did Spencer Rock ever communicate to
8 North Star that Nugget had a contract with North
9 Star?
10 A Did -- could you please repeat the
11 question?
12 MR. MACHETANZ: You used the word
13 Spencer.
14 THE WITNESS: I'd like for her to
15 repeat the question.
16 MR. SEWRIGHT: Object to the form. Do
17 you want to rephrase, or do you want her to read
18 it?
19 (Question was read by the reporter.)
20 A I can't answer that. I don't know the
21 answer to that question.
22 BY MS. HO:
23 Q Okay. So there was no purported
24 communication that you know of from Spencer?
25 A From Spencer to us that Nugget had a

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WITNESS CERTIFICATE

JEFFREY "JEFF" BENTZ Taken November 21, 2005

I hereby certify that I have read the foregoing deposition and accept it as true and correct, with the following exceptions:

PAGE	LINE	CORRECTION
44	4	"EGC" should say AGC
69	22	"Lapire" should say "Randolph"
101	11	"cut off" should say "cut off"?
152	23	This jurisdiction
152	24	Kinds
181	21	I + collector
182	6	By Nugget
185	13, 14	"They" means Nugget
195	23	"corp" should be court

1-10-08
Date


JEFFREY BENTZ

(Use additional paper to note corrections as needed, signing and dating each page.) (LK)